

THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

IN RE:

January 10, 2003

**MICHAEL ADKINS D/B/A KIRBY
VACUUM OF KINGSFORT, MIDWAY
KIRBY, G & C SYSTEMS; AND KIRBY
CENTER**

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DOCKET NO. 02-00325

ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") at a regularly scheduled Authority Conference held on October 21, 2002, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the "CSD") and Michael Adkins d/b/a Kirby Vacuum of Kingsport, Midway Kirby, G & C Systems and Kirby Center ("Kirby" or the "Company") related to alleged violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statutes.¹ The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and

¹ See Tenn. Code Ann. § 65-4-401 *et seq.*

proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires persons or entities desiring to make telephone solicitations to residential subscribers to register in the Do-Not-Call program. Tenn. Code Ann. § 65-4-405(f) authorizes the Authority to initiate proceedings relative to violations of the Do-Not-Call statutes and the TRA rules and regulations promulgated pursuant to the Do-Not-Call statutes.² “Such proceedings may include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction.”³

The CSD’s investigation in this docket commenced after it received a complaint on January 25, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Kirby on January 21, 2002. The CSD provided Michael Adkins with notice of this complaint on January 31, 2002. Kirby was not registered as a telephone solicitor at the time of the alleged telephone solicitation. On February 14, 2002, the CSD received a second complaint alleging that a person acting on behalf of Kirby made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call Register on February 1, 2002. The CSD provided Mr. Adkins with notice of this complaint on March 11, 2002.

The proposed Settlement Agreement was negotiated as the result of the CSD’s investigation into the complaint against Kirby. The maximum penalty faced by Kirby in this docket was six thousand dollars (\$6,000) arising from the two (2) complaints and the failure to register in the Do-Not-Call Program. In negotiating the terms and conditions of

² See Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.*

³ Tenn. Code Ann. § 65-4-405(f).

this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

Kirby, which is located in Kingsport, Tennessee, employs two (2) workers. During the investigation, Kirby contacted the CSD and expressed an interest in resolving this matter. In addition, Kirby registered with the TRA as a telephone solicitor on February 1, 2002. After Kirby's registration in the Do-Not-Call Program expired on June 30, 2002, Mr. Adkins submitted an affidavit attesting that Kirby has ceased and will no longer engage in telephone solicitation in the State of Tennessee. The TRA has received no additional complaints from Tennessee consumers regarding Kirby arising after February 1, 2002. Kirby also agreed to pay to the Authority the amount of four thousand eight hundred dollars (\$4,800) in settlement of these violations. The first payment, of one thousand dollars (\$1,000), is to be paid no later than five (5) days from the date of the Authority's approval of the Settlement Agreement.⁴ There will be seven (7) payments of five hundred dollars (\$500), each of which shall be remitted to the TRA no later than the first business day of each month for the next seven (7) consecutive months. The final payment of three hundred dollars (\$300) shall be paid on the first business day of the eighth (8) consecutive month following the Authority's approval of the Settlement Agreement.

A representative of Kirby participated telephonically during the Authority

⁴ The Authority received Kirby's payment of \$1,000.00 on October 31, 2002.


Conference on October 21, 2002. Following a discussion with the parties and a review of the Settlement Agreement, the Directors voted unanimously to accept and approve the Settlement Agreement.

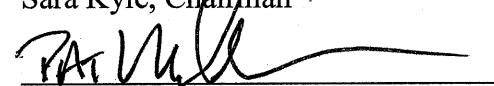
IT IS THEREFORE ORDERED THAT:

1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.

2. The amount of four thousand eight hundred dollars (\$4,800) shall be paid by Kirby to the TRA in settlement of these violations. The first payment of one thousand dollars (\$1,000) shall be paid no later than five (5) days from the date of the Authority's approval of the Settlement Agreement. There will be seven (7) payments of five hundred dollars (\$500), each of which shall be remitted to the TRA no later than the first business day of each month for the next seven (7) consecutive months. The final payment of three hundred dollars (\$300) shall be paid on the first business day of the eighth (8) consecutive month.

3. Upon payment of the amount of four thousand eight hundred dollars (\$4,800) and compliance with the terms of the Settlement Agreement attached hereto, Kirby is excused from further proceedings in this matter, provided that, in the event of any failure on the part of Kirby to comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this docket.


Sara Kyle, Chairman


Pat Miller, Director


Ron Jones, Director

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:

ALLEGED VIOLATIONS OF TENN.
CODE ANN. §65-4-401 *et seq.*, DO-NOT-
CALL SALES SOLICITATION LAW,
AND RULES OF TENNESSEE
REGULATORY AUTHORITY, CHAPTER
1220-4-11, BY:

MICHAEL ADKINS, D/B/A KIRBY
VACUUM OF KINGSPORT, MIDWAY
KIRBY, G & C SYSTEMS AND KIRBY
CENTER

DOCKET NO. 02-00325

DO-NOT-CALL PROGRAM T02-00044
FILE NUMBERS T02-00084

SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Michael Adkins d/b/a Kirby Vacuum of Kingsport, Midway Kirby, G & C Systems and Kirby Center ("Kirby Vacuum" or the "Company"). This Settlement Agreement pertains to two (2) complaints received by the CSD, alleging that Kirby Vacuum violated the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations, TENN. CODE ANN. § 65-4-401, *et seq.*, and TENN. COMP. R. & REGS. 1220-4-11.07. This Settlement Agreement is subject to the approval of the Directors of the TRA.

TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1), prohibit persons from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the TRA of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires that

EXHIBIT

A

persons or entities desiring to make telephone solicitations to residential subscribers shall pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations.

The CSD's investigation in this docket commenced after it received a complaint on January 25, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Kirby Rug Cleaning Service on January 21, 2002. The CSD provided Mr. Adkins with notice of this complaint on January 31, 2002. The CSD received a second complaint on February 14, 2002, alleging that a person acting on behalf of Kirby made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call register on February 1, 2002. The CSD provided Mr. Adkins with notice of this complaint on March 11, 2002.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Kirby Vacuum in this proceeding is six thousand dollars (\$6,000), arising from the two (2) telephone solicitations and the Company's failure to register in the Do-Not-Call Program.

In negotiating this Settlement Agreement, CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violation. Kirby Vacuum is located in Kingsport, Tennessee. It employs two (2) persons in the state of Tennessee. During the investigation of the complaints, Kirby Vacuum contacted the CSD and expressed an interest in resolving this matter. In addition, Kirby Vacuum registered with the TRA as a telephone solicitor on February 1, 2002. CSD has received no additional complaints from Tennessee consumers arising after February 1, 2002.

After Kirby Vacuum's registration in the Do-Not-Call program expired on June 30, 2002, Kirby Vacuum submitted an affidavit, attached hereto as Exhibit A, stating that it has ceased and will no longer engage in telephone solicitation of residential consumers in the State of Tennessee.

In an effort to resolve these complaints, represented by the file numbers above, CSD and Kirby Vacuum agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

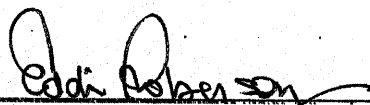
1. Kirby Vacuum admits that the two (2) complaints against it are true and valid complaints and that it acted in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).
2. Since receiving notice of the complaints that are the subject of this Agreement, Kirby Vacuum has come into compliance with TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1). Kirby Vacuum contacted CSD and expressed an interest in resolving this matter. In addition, Kirby Vacuum registered with the TRA as a telephone solicitor on February 1, 2002. After Kirby Vacuum's registration in the Do-Not-Call program expired on June 30, 2002, Kirby Vacuum submitted an affidavit, attached hereto as Exhibit A, stating that it has ceased and will no longer engage in telephone solicitation of residential consumers in the State of Tennessee.
3. Kirby Vacuum agrees to pay a total of four thousand eight hundred dollars (\$4,800.00) in settlement of these complaints and agrees to remit the amount of one thousand dollars (\$1,000.00) to the TRA Office of the Chairman no later than five (5) days after the date the Directors of the TRA approve this Settlement Agreement.¹ The remaining eight (8)

¹ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket Number 02-00325.

installments, consisting of five hundred dollars (\$500.00) each for the next seven (7) consecutive months and a final payment of three hundred dollars (\$300.00), shall be remitted to the TRA no later than the first business day of each month for the next three (3) consecutive months. Upon payment of the amount of four thousand eight hundred dollars (\$4,800.00) in compliance with the terms and conditions of this Settlement Agreement, Kirby Vacuum is excused from further proceedings in this matter.

4. Kirby Vacuum agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations.
5. Kirby Vacuum agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
6. In the event that Kirby Vacuum fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket. Kirby Vacuum shall pay any and all costs incurred in enforcing the Settlement Agreement.
7. If any clause, provision or section of this Settlement Agreement shall, for any reason, is held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

8. This Settlement Agreement represents the entire agreement between the parties, and there are no representation, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.

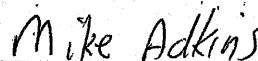


Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority

10/4/02
Date



Signature



Print Name

DISTRIBUTOR

Print Title

9/5/02
Date

Adkins, 14

STATE OF TENNESSEE)
COUNTY OF SULLIVAN)

) SS:

AFFIDAVIT

The undersigned, Mike Adkins, being first duly sworn according to law, deposes and states as follows:

1. I am the principal of Kirby Vacuum of Kingsport also doing business as Adkins Distributing, an independent distributor of Kirby cleaning systems located at 1001 Royal Pines Plaza, Kingsport, Tennessee 37663 .
2. Following my meeting with Ed Mimms, and others, in Nashville, March 21, 2002, it was my understanding that my distributorship had to comply with the Tennessee No-Call Registry since I was using telemarketers to set appointments.
3. My distributorship ceased the use of telemarketers in my business operations for purposes of contacting potential consumers by telephone following the March 21, 2002 meeting

FURTHER AFFIANT SAYETH NAUGHT.

Mike Adkins
Mike Adkins

2002. SWORN TO BEFORE ME and subscribed in my presence this 12th day of August,

Nanci Noel-Smith
Notary Public

My Commission Expires January 15, 2006.